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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,525	10/25/2001	Robert F. Bartfai	POU920010013US1	4463

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EXAMINER

MANOSKEY, JOSEPH D

ART UNIT PAPER NUMBER

2113

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/028,525

Applicant(s)

BARTFAI ET AL.

Examiner

Joseph D. Manoskey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Information

1. Applicant and the assignee of this application are requested under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is requested as follows:

Referring to paragraph 8 on page 2 of the Affidavit, the Examiner asks the Applicant to further explain what it is meant by "generally available" and "before the end of the year 2000". The Examiner also makes a request for any information concerning the public use and/or sale of the claimed invention.

This request is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this request. The time period for reply to this request coincides with the time period for reply to the enclosed Office action.

Minor Informalities

2. The Affidavit/Declaration filed under 37 CFR 1.131 has not been signed by all the inventors or it has not been shown that less than all named inventors of an application invented the subject matter of the claims under rejection (See MPEP 715.04(I)). As

none of the exceptions noted in MPEP 715.04 have been established, the declaration is ineffective on its face and the previous rejection is therefore maintained, see below.

The following are other matters concerning the Affidavit/Declaration's inefficiencies that will need to be corrected to overcome the prior art of record.

3. Applicant describes how each element of claim 1 was implemented. However, the explanation is not linked in a clear manner to the Exhibit provided. Furthermore, the mapping of the claims in the Affidavit/Declaration filed under 37 CFR 1.131 does not include claims 2-6 which contain additional claimed limitations that are not in claim 1.

4. The Affidavit/Declaration filed under 37 CFR 1.131 is found to be ineffective in overcoming the prior art rejection. The affidavit does not meet the requirements for establishing actual reduction to practice, for an actual reduction to practice, the invention must have been sufficiently tested to demonstrate that it will work for its intended purpose (See MPEP 2138.05). The Affidavit/Declaration shows no evidence for actual reduction to practice. The supplied evidence, a software design document, may at best support conception but not reduction to practice, since reduction to practice requires that the device existed and worked for its intended purpose. The Affidavit/Declaration states various testing was performed but no supporting evidence is used to demonstrate this. Appropriate evidence would be any in house testing/debugging documentation that shows all parts of the claimed invention were operational and functioning as expected.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen, U.S. Patent Application Publication 2003/0018926.

7. The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

8. Referring to claim 1, Chen teaches a method of running a diagnostics program on an adapter in a node of a network without needing to reboot, this is interpreted as a method for handling errors in adapters used for communications in data processing

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network having at least two nodes connected through a switch, said error handling method comprising detecting a nonpermanent error condition, within an adapter connected to one of said nodes, from which recovery is possible from within the node connected to said adapter (See Fig. 2, paragraphs 0001 and 0005).

Chen teaches blocking any new open system calls, this is interpreted as suspending communications from within the node with the adapter affected by said error condition (See paragraph 0005). Chen also teaches blocking input/output calls making dormant clients and applications and Chen teaches the resumption of the applications that have been blocked but are still open, this is interpreted as disabling communication between said affected adapter and said switch so as to provide an indication to at least one other node in said network that communication with said affected adapter is at least temporarily suspended so as to effectively cause suspension of, but not termination of, applications running on said at least one other node in said network (See paragraphs 0005 and 0025).

Chen discloses running a diagnostic program for the adapter, this is interpreted as performing recovery operations, at said affected node, to restore operation of said affected adapter, based on said detected error condition, said recovery including enablement of said disabled communication (See paragraph 0005). Finally Chen discloses resuming all blocked clients and applications, this is interpreted as resuming communications with said affected adapter upon enablement of said disabled communication (See paragraph 0025).

9. Referring to claim 2, Chen teaches a method of running a diagnostics program on an adapter in a node of a network without needing to reboot, this is interpreted as a method for handling adapter errors in a multinode data processing network in which node-to-node communication is at least partially handled by adapters connected to said nodes, said adapters operating to pass messages from said nodes through a switch which links the nodes in said network, and detecting a nonpermanent error condition, within an adapter connected to one of said nodes, from which recovery is possible from within the nodes connected to said error affected adapter (See Fig. 2, paragraphs 0001 and 0005).

Chen teaches blocking any new open system calls, this is interpreted as suspending communications from the node connected to said affected adapter (See paragraph 0005). Chen also teaches blocking input/output calls making dormant clients and applications and Chen teaches the resumption of the applications that have been blocked but are still open, this is interpreted as disabling communication between said affected adapter and said switch so as to provide an indication to at least one other node in said network that communication with said affected adapter is at least temporarily suspended so as to effectively cause suspension of, but not termination of, applications running on said at least one other node in said network (See paragraphs 0005 and 0025).

Chen discloses running a diagnostic program for the adapter, this is interpreted as performing recovery operations, at said affected node, to restore operation of said affected adapter, based on said detected error condition, said recovery including

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enablement of said disabled communication (See paragraph 0005). Chen also discloses blocked clients and applications will close after retrying for amount of time, this is interpreted as terminating said running applications on nonaffected nodes in said network upon a determination that reestablishment of communication with said affected adapter is taking too long (See paragraph 0025). Finally Chen discloses resuming all blocked clients and applications, this is interpreted as otherwise maintaining said running applications and restoring communications with said affected node after performance of said recovery operations (See paragraph 0025).

10. Referring to claim 3, Chen teaches the applications running in a window environment (See paragraph 0027).

11. Referring to claim 4, Chen discloses blocking I/O calls to the adapter, this is interpreted as fencing at least one communication port via which said adapter is connected to said switch (See paragraph 0005).

12. Referring to claim 5, Chen discloses blocking and system calls and I/O calls to the adapter, this is interpreted as halting direct memory access between said affected adapter and the node to which it is connected (See paragraph 0005).

13. Referring to claim 6, Chen teaches running a diagnostic program on the adapter, this is interpreted as logging operations which are carried for said adapter to facilitate error analysis (See paragraph 0005).

Response to Arguments

14. Applicant's arguments, see pages 8 of amendment, filed 7 July 2005, with respect to the rejection of claim 1-6 have been fully considered but they are not persuasive. The previous rejection is maintained

The applicant restates the argument that the cited prior art teaches the termination of the running applications and not the suspension of them. The examiner respectfully disagrees. In paragraph 0005 Chen teaches "Upon completion of diagnostic testing of the adapter, all blocked clients and applicants of that adapter are resumed if they are still open and awaiting adapter resources. Chen also teaches in paragraph 0025, "After that point, the device driver resumes all the blocked clients and applications if they are still open and awaiting resources." Chen teaches the resumption of the applications that have been blocked but are still open, this is interpreted as the suspension and not termination of the running applications. The above rejections have been previously clarified to emphasize this.

Conclusion

15. This Office action has an attached request for information under 37 CFR 1.105. A complete reply to this Office action must include a complete reply to the attached

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request for information. The time period for reply to the attached request coincides with the time period for reply to this Office action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Manoskey whose telephone number is (571) 272-3648. The examiner can normally be reached on Mon.-Fri. (7:30am to 4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDM
September 14, 2005


ROBERT BEAUSOLIEL
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